

12/07/2018

JULIA C. DUDLEY, CLERK
BY: H. Wheeler
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

CHERYL DRUMHELLER,)
)
Plaintiff,)
)
v.) Case No. 3:18CV00117
)
FOOD LION LLC,)
)
Defendant.)

COMPLAINT

Plaintiff, Cheryl Drumheller, (“Cheryl”) by counsel, files the following Complaint against Defendant, Food Lion LLC. (“Food Lion”).

Cheryl Drumheller seeks (a) compensatory damages and punitive damages of One Million Dollars (\$1,350,000.00), plus (b) prejudgment interest on the principal sum awarded by the jury from November 28, 2017 until the date judgement is entered pursuant to §8.01-382 of the Virginia Code (1950) as amended (the “Code”), plus (c) attorney’s fees and expenses, witness fees pursuant to Title 29 U.S.C § 2617(a)(3) and Title 42 U.S.C. §1988 and 12205 and (d) costs incurred.

I. PARTIES

1. Cheryl Ann Drumheller (“Cheryl”) is a citizen of North Carolina. She was born January 29, 1963 and she has a high school education. Her first husband walked out of her when Cheryl was 6 months pregnant with her youngest daughter. Cheryl divorced him and was awarded full custody of her four (4) children. On or about August 25, 1997, Food Lion opened a store at Lake Monticello in Palmyra, Virginia. Although family and friends advised Cheryl to go on welfare, Cheryl said “no” and applied for a position at the new Food Lion where she was hired on

September 15, 1995 as a part time deli clerk. The hardest thing she ever had to do was leave her children and her little baby, Cassidy, each day and go to work. In or about 1999, a full-time position became available in the meat department. Food Lion asked Cheryl if she wanted the job. Cheryl took the positon in order to advance and to earn more money to feed her family. In 2009, Cheryl was diagnosed with Lupus. Her Rheumatologists told her that she had to get out of the cold. The Food Lion store manager at the time, Bobby Sprouse, was a great guy. He moved Cheryl up to the Deli. On August 8, 2012, a Fluvanna County Deputy Sheriff pulled into Cheryl's driveway in the early morning. The Sheriff advised Cheryl that her son, Brian, had had a car accident. Brian hit a tree, went through the windshield and died. Cheryl was devastated. After Brian's death and at all times relevant to this action Cheryl was disabled. She suffered from chronic fatigue syndrome, migraine headaches and other ailments. Cheryl's conditions were managed with medications that she was required to take daily.

Between 1997 and 2017, Cheryl was a dedicated and valuable employee for Food Lion. Customers loved her and knew her by name. Customers called the 1-800 number to report Cheryl's great customer service on behalf of the company. In 2017, Food Lion employees began to discriminate against Cheryl. Food Lion fired Cheryl from store 0959 on November 28, 2017.

2. Food Lion LLC is a grocery store company owned by international food retailer, Ahold Delhaize (AMS). Headquartered in Salisbury, North Carolina, Food Lion operates more than 1,100 supermarkets in ten (10) states in the south eastern United States, including Virginia. [<https://www.foodlion.com/>]. Food Lion is a limited liability company organized and existing under the laws of North Carolina. Food Lion's sole member is Delhaize America, LLC, formerly known as Delhaize America, Inc. Delhaize America, LLC is a North Carolina limited liability company whose members are Delhaize The Lion America, LLC, a Delaware limited liability company, whose principal place of business is located in Salisbury, North Carolina, and

Lion US Participations S.a.r.l., a Luxembourg corporation, whose principal place of business is located in Luxembourg. The sole member of Delhaize The Lion America, LLC is Lion US Participations S.a.r.l., a Luxembourg corporation, whose principal place of business is located in Luxembourg. The sole member of Lion US Participations S.a.r.l. is Lion US Holdings S.a.r.l., a Luxembourg corporation, whose principal base of business is located in Luxembourg. The sole member of Lion US Holdings S.a.r.l. is Delhaize U.S. Holding, Inc., a Delaware corporation, whose principal place of business is located in Salisbury, North Carolina. None of Food Lion's members is a citizen of Virginia.

Food Lion is an “employer” within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e(b) and Equal Opportunity for Individuals with Disabilities Act (“ADA”), 42 U.S.C. §12111(5)(A).

III. JURISDICTION AND VENUE

3. The District Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction) and 1337 (supplemental jurisdiction).
4. The Defendant is subject to personal jurisdiction in Virginia pursuant to Virginia’s long-arm statute §8.01-328.1(A)(1) and (A)(3) of the Code, as well as the Due Process Clause of the United States Constitution.
5. Venue is proper in the Charlottesville Division of the United States District Court for the Western District of Virginia. A substantial part of the events or omissions giving rise to the claims stated in this action occurred in the Western District of Virginia.
6. Cheryl Drumheller has duly exhausted her administrative remedies. She filed for a Charge of Discrimination with the United States Equal Employment Opportunity Commission (“EEOC”) on May 29, 2018 and received a Right to Sue Letter from the EEOC on September 10, 2018.

III. STATEMENT OF THE FACTS

7. Cheryl Drumheller is a qualified individual under the ADA.
8. By late 2016, the work environment at Food Lion store 0959 had become toxic and hostile for Cheryl. Because of her Lupus, Fibromyalgia and Chronic Fatigue Syndrome, Cheryl's brain does not work well sometimes. It is called "fibro fog". Chronic fatigue syndrome exacerbates Cheryl's condition. Food Lion and its managers and employees were well aware of Cheryl's conditions and disabilities. One Food Lion employee in particular, Judy Ruggiero ("Ruggiero"), had it out for Cheryl. Before Obaugh took a medical leave, Cheryl was trying to find a home for her daughter's pug, and Obaugh and employee Karen Grubbs ("Grubbs") were both trying to help Cheryl. Obaugh's wife planned to meet Karen because she found the dog a home over the mountain. After Obaugh went on medical leave, Ruggiero expressed that she did not like the fact that Grubbs was talking to Cheryl. On December 26, 2017, Ruggiero told Grubbs, "I don't want you talking to Cheryl". Grubbs responded by telling Ruggiero that "you can't tell me who I can and can't talk too." The next day, Cheryl was in the back room of the store. Katja Simpson, the customer service manager ("Simpson"), fell hard on the cement floor and really hurt herself. Cheryl went over to pick Simpson up. Cheryl helped walk her into the manager's office. Cheryl waited with Simpson because Simpson hurt her hand and back and Cheryl wanted to know if she needed ice. There were other employees in the manager's office, including the produce manager and deli manager, Jennifer. Cheryl told them what had happened to Simpson. Ruggiero came into the office and yelled at Cheryl in a very degrading manner. Ruggiero stated, "What are you doing in here. You have no business or reason for being in here. Get out and get back to work. That's what you should be doing, working." Ruggiero was not Cheryl's supervisor. She had no right to treat Cheryl in that manner. Cheryl was embarrassed and humiliated.

9. Ruggiero had been tormenting and abusing Cheryl for some time. On a Tuesday in late July 2016, Cheryl was working on a tote putting out tooth brushes. A customer came up. Her name was Linda Bates. Cheryl had known her for a very long time. Cheryl talked to Linda while she filled the tooth brushes. Cheryl and Linda were $\frac{3}{4}$ of the way down the aisle. Ruggiero came to the top of the aisle and screamed at Cheryl so loud that people heard her in the next aisle over. Ruggiero screamed, "Cheryl, stay away from Mike Stanley and leave him alone." Stanley was a retired employee who Cheryl had merely asked for help. Cheryl was in shock that Ruggiero would actually scream that loud on the sales floor in front of customers and other people, including a member of the Reset Team, Kelly. Kelly told Cheryl that Ruggiero should be fired for what she just did. Linda, the customer, looked at Cheryl and asked, "are you Ok?" Cheryl started crying because she was the only one in the store that was treated this way by Ruggiero and by Food Lion's managers. Obaugh was aware of Ruggiero's misconduct.¹ Before he went out on medical leave, Obaugh admonished Ruggiero to respect Cheryl.

10. In Obaugh's absence, Cheryl decided to report Ruggiero's conduct to the acting store manager, Wes Hatcher ("Hatcher"). Cheryl had put up with a lot of abuse from Ruggiero. The incident in December 2017 was the straw that broke the camel's back. Cheryl decided to stand up for herself and make a complaint.

11. Food Lion's response to Cheryl's complaint was to put Cheryl on the 3:00 p.m. – 11:00 p.m. shift – a shift that Food Lion knew Cheryl could not physically or emotionally work due to her disabilities.

12. Hatcher never addressed Cheryl's complaint and never talked to Ruggiero.

¹ Linda Bates finally talked to Obaugh on September 7, 2016. Ms. Bates told Obaugh what Ruggiero did to Cheryl. Obaugh made Ruggiero apologize to the customer for screaming at Cheryl. Cheryl was dismayed that Ruggiero was never written up, never made to apologize to Cheryl for the grossly inappropriate conduct, and Obaugh never said anything to Cheryl after Ms. Bates came to talk to him.

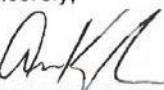
13. Cheryl then spoke to senior manager, Junior Castle (“Castle”), about the hostile work environment. Cheryl explained that the problem with Ruggiero had not been addressed. Castle told Cheryl that employees had told him that they did not like Cheryl and that it was an HR matter. Cheryl got the run-a-round. Food Lion HR representative, Tim Austin, told Cheryl that it was a manager’s decision.

14. Food Lion’s response to Cheryl’s complaint and plea for help was nothing more than harassment. Cheryl had been bullied and abused by Ruggiero. Cheryl was so stressed out that she had to put in for her last week of vacation because she could not work the unlawful shift imposed in retaliation for her complaint about Ruggiero.

15. In January 2017, Cheryl’s doctor recommended the following limitations on her employment:

We advise the following limitations upon her return: no evening/ late shifts. *No later than 2:30pm*
These limitations should continue indefinitely due to issues with chronic fatigue and
other medical conditions contributing to concerns for safety with driving at night.

Sincerely,



ANN M KLECAN, MD

SENTARA MARTHA JEFFERSON FAMILY MEDICINE

16. On January 30, 2017, Cheryl was granted an accommodation by Food Lion under the ADA:

Americans with Disabilities (ADA)
Accommodation Documentation Form

Associate Name Cheryl Drumheller Associate # 1005067

Job Title FT SPECIALTY MERCHANDISE ASSOC Department Center store Store # 0959

1. The physical, mental and/or cognitive impairment(s) that limit the associate's ability to do his/her job Chronic fatigue as well as other chronic medical conditions.
2. Accommodation requested No working in the cold such as meat dept. No being confined to a cash register. And no schedule past 2:30 PM.

3. Request for accommodation:
 Granted

17. In spite of the accommodation, Food Lion again changed Cheryl's hours soon after granting the accommodation and asked her to work until 3:00 p.m. On May 18, 2017, Cheryl's doctor supplied the following note and advice:

5/18/2017

This is to confirm that Cheryl Drumheller is under my care. This letter is to clarify a letter written on her behalf in January. At that time, I had advised no evening/ late shifts. These limitations should continue indefinitely due to issues with chronic fatigue and other medical conditions contributing to concerns for safety with driving at night.

This was interpreted as no working past 2:30 pm. She is able to work until 3:30 pm but should not be working the 3-11 pm shift.

I hope you will grant this accommodation. Please contact me if you have any other concerns.

Only on Wednesday and Saturday
AK

Sincerely,

ANN M KLECAN, MD
SENTARA MARTHA JEFFERSON FAMILY MEDICINE



18. Obaugh never had the second request for accommodation approved by Food Lion.

19. Between January 30, 2017 and November 28, 2017, things got much worse for Cheryl.

Although Ruggiero was told not to talk to Cheryl, the abuse and nasty remarks continued. Cheryl reported the continued harassment, but Food Lion did nothing. On January 31, 2017, Ruggiero totally lost it in the back room when Cheryl started down

stacking the truck. Cheryl had been told to do this assignment with Ruggiero. Ruggiero came to the back and started yelling at Cheryl in front of other employees. Cheryl reported the matter to Simpson, who was manager on duty that day. Simpson told Cheryl that she would talk to Ruggiero and called her to the front office. Simpson later told Cheryl that Ruggiero admitted to talking to Cheryl. Cheryl stated that Ruggiero should be written up for comments and disobedience. Simpson refused to write up Ruggiero for anything.

20. Simpson did not write up Ruggiero because they were good friends, part of that pack that went to lunch together every day. Ruggiero talk to Cheryl in violation of a direct order, made hateful remarks to Cheryl, refused to help down stack the truck because she didn't want to be in the back room with Cheryl – and Food Lion let Ruggiero get away with it.

21. Cheryl was harassed every day she was there. She told Obaugh that all she wanted was to be left alone to do her job. After a while, Obaugh decided that he wanted Ruggiero and Cheryl to start talking and to get along. Obaugh stated that he wanted Cheryl to be able to ask Ruggiero for help if need be. Ruggiero was nice to Cheryl for a while, but quickly went back old ways, telling Cheryl what to do, talking down to Cheryl, very harsh with feedback if Cheryl asked a question. Ruggiero routinely embarrassed Cheryl in front of others.

22. On Saturday, May 13, 2017, Cheryl had had enough of Ruggiero's condescending attitude. Cheryl was tired of being bullied by Ruggiero. Cheryl spoke with Obaugh and Simpson in the back room. Cheryl explained why and how Ruggiero was disrespecting Cheryl again and that she (Cheryl) was done with it. Cheryl wanted to be separated from Ruggiero and to have no further contact with her abuser. Obaugh said, "no". Obaugh

stated that he wanted Cheryl to get along with Ruggiero. Obaugh stated that “well she’s from NY. Judy just has that harsh way of talking. You’ll just have to ignore it.” Cheryl notified Obaugh that he was “letting her disrespect me again and harass me and this was all taken care of when you were on medical leave. We weren’t allowed to talk to each other. She’s not nice to me. Judy doesn’t treat me nice like everybody else and she lies when she does something or bullies me and you don’t believe me anyway if I tell you because you tell me all the time you don’t believe anything I say.”

23. On May 16, 2017, Cheryl went to the back room. Ruggiero was unloading a pallet. Cheryl simply asked Ruggiero if she found any of Cheryl’s things on the pallet. Ruggiero started in on Cheryl. The stress from the continuing abuse took a toll on Cheryl. When Ruggiero turned her back on Cheryl, Cheryl raised her voice and said, “go ahead, tell your friends, but they won’t tell the truth.” Unlike Ruggiero who screamed in public, Cheryl did not say anything to Ruggiero out on the sales floor in front of customers or degrade her in front of employees. Cheryl did not want any contact with Ruggiero. She begged Obaugh to be separated from Ruggiero. After Cheryl raised her voice in the back room, Ruggiero ran to Obaugh and Obaugh reprimanded Cheryl. It was a complete setup. Cheryl met Obaugh and Simpson in the office. Obaugh represented that “I told you on Saturday, May 13th that you were not allowed to talk to Judy and today I’m writing you up because you raised your voice at her and talked to her after I just told you not to talk to her.” Cheryl was dumfounded. She said, “what is wrong with you. That is a flat out lie. I came to you and told you that I didn’t want Judy talking to me, and you denied my request, and I even told you she’s back to degrading me and I’m not putting up with it and I wanted it back to the way it was when you were on medical leave, and you told me ‘NO’”. Then Cheryl turned to Simpson, the customer service manager, and said, “you

were right there in the conversation.” Simpson said nothing. Cheryl was written up. It was her first and only write-up in twenty (20) years. The Performance Counseling Form reads:

Details
Date of Incident: 5/16/2017 Time of Incident : 10:30am
Description of Incident: Cheryl and Judy have been told not to speak to each other. The incident today was witnessed as Cheryl yelled across the backroom at Judy disrespectfully. We cannot have this in our place of business. We must act professional.
Plan for Improvement: Cheryl will not speak to Judy.

24. After May 2017, Food Lion ramped up the harassment and intimidation of Cheryl. On or about June 11, 2017, Obaugh wrote Cheryl up for only working 20 HBC totes and for talking to a cashier (Nicky) about being upset. Obaugh never gave Cheryl a copy of the counseling form. Cheryl was upset because Simpson, a customer service manager, told Cheryl that she (Cheryl) bothered “Jennifer and Hope”, that the cashiers “can’t stand you” and they “cringe when you come walking in the door”. These abusive personal attacks greatly upset Cheryl. Simpson knew that Cheryl was disabled and did not handle stress well. A caring cashier, Nicky, saw Cheryl crying and tried to console her. This is not anything anyone would ever get reprimanded for. In truth, Food Lion used the counseling process as a way to harass Cheryl and break her will. As for the “only 20 totes” criticism, Cheryl had to make a Unified frozen order before she could work on her pallet of HBC totes. When she went to the back room, Cheryl discovered that a cart of her frozen Unified had been left outside the ice cream freezer door. Cheryl put the cart back in the freezer until she put her things away in her locker. Craig, a manager, came in the back room. Cheryl told Craig that she put the cart back in the freezer. Craig told Cheryl, “I did the same thing. I came in this morning and it was sitting outside the

freezer, and I pushed it back in the freezer. Leroy told me after a while that the cart of frozen food was no good, somebody had left it out of the freezer the night before when the store closed". Cheryl asked Craig "why didn't the boxes have Xs on them or a note put on the cart letting everybody know that this food was no good?" Cheryl told Craig that someone should have put a note or wrote on the boxes "food bad" because if Cheryl had not mentioned that she found the cart outside the freezer, she might have put the bad food out and customers would have gotten sick really sick. When Cheryl saw Leroy Hestor, she asked him why he didn't put a note on the cart. Hester's exact words to Cheryl were "because I don't have too." The mess with the frozen food put Cheryl behind schedule that morning, which is why she only completed 20 HBC totes. During the meeting to discuss the counseling, Obaugh reminded Cheryl that he had reviewed the tape of her entire work day and that he was "watching her", which tremendously frightened Cheryl. Obaugh also told Cheryl she was "terrible and there must be something wrong with you". Obaugh said Cheryl's brain had "big problems" and Cheryl "definitely better start acting right."

25. In September 2017, Cheryl received a "final" counseling, which stated:

Details
Date of Incident: 9/25/2017 Time of Incident : 9:00am Description of Incident: On Sunday Cheryl was outside looking through a customers car. The associates that were sitting on the smoke bench alerted me that she may be putting herself in danger because car belongs to her ex-sen in law. On Monday 9/25/2017 she proceeded to come in for her shift and start yelling at Josh Wheaton about how he needs to stay out of her business. Plan for Improvement: This is a respect in the workplace issue that we have discussed in previous counseling. You will come to work, run your truck and not speak to other associates about your personal life.

26. Contrary to the counseling form, Cheryl did not yell at Josh Wheaton. The "incident" was not a "respect in the workplace issue" at all.

27. The remainder of Cheryl's time at Food Lion was characterized by complete isolation, lack of help and support, and retribution. When Cheryl did ask for help from Matt DuBose ("DuBose"), an assistant store manager, he told her "nobody wants to help you. They would rather punch out and go home than help you." Cheryl was informed that "You have ostracized everybody. They refuse to help you." If anybody ostracized Cheryl it was Obaugh, Simpson, Ruggiero and the handful of employees that Ruggiero turned against Cheryl. Cheryl could not believe that DuBose, a manager who had only been in the position since September, was speaking such hateful, obnoxious things, and that he did not care that he was hurting Cheryl's feelings. Cheryl was so upset that she said to DuBose "You can't talk to me that way. You can't say that to me." DuBose said, "yes I can. I can talk to you anyway I want and I'm telling you the truth." Cheryl finally walked away and tried to go back to work on her aisle, but she was so devastated that she had to get off the floor because she started crying. She went to the restroom and backroom and got some water and tried to calm down. DuBose was not content to leave Cheryl alone. He followed her to her aisle. He started harassing Cheryl about Ruggiero and an incident that occurred on October 16, 2017, where Ruggiero yelled at Cheryl in the parking lot after work. Cheryl started shaking. No other employee was treated this way by management. Cheryl told DuBose to leave her alone and that she was not discussing anything with him on the sales floor. The incident was witnessed by a customer, Mrs. Thomas, who had been standing nearby. When DuBose finally left the aisle, Mrs. Thomas, who saw Cheryl crying, said "that should never happen. There is a time and a place for everything and a manager should never reprimand and yell at a employee on the sales floor and a manager should never yell at an employee anyway."

28. Mrs. Thomas asked Cheryl to “please tell that manager that I’m not happy with what I just saw.” Cheryl found DuBose in his office. Cheryl told DuBose what the customer told her to tell him. DuBose said, “Don’t talk to me unless you have Human Resources with you.”

29. Cheryl decided to report DuBose to HR. Cheryl spoke with Stacey. Stacey told Cheryl that DuBose had no right to speak to Cheryl that way and it was terrible. Stacey also took the customer’s name and phone number down since the customer wanted to speak to somebody higher up. Stacey said somebody would be in touch with Cheryl.

30. On Friday, October 20, 2017, Cheryl was working and DuBose announced over the headset that Cheryl had a phone call and she better take the call in the front office with the door closed. DuBose let the whole store know that Cheryl had this phone call to embarrass her. The man on the phone was from Human Resources and his name was John Furrow (“Furrow”). Furrow turned out to be a management lackey. Furrow said he was calling Cheryl back about her complaint. Furrow told Cheryl he wanted to meet somewhere outside the store, so Cheryl would feel comfortable and so she could tell her side of the story. Cheryl explained to Furrow that DuBose had told Cheryl that “nobody wants to help you. They would rather go home” etc. Furrow claimed that DuBose had the right to treat Cheryl the way he did and to say the things he said. “Yes, he[DuBose] did. There’s nothing wrong with what he said to you. Matter of fact, I wouldn’t want to work where nobody liked me or even get up out of bed and go to work where nobody liked me.” Those were Furrow’s words. Cheryl replied that “you have to be kidding me. He made me feel terrible and then he was reprimanding me on the sales floor and a customer witnessed it and she wants to be called.” Furrow then said, “we don’t involve

customers or call them. Then he revealed that DuBose had already called and given his statement and explained why he said what he said to Cheryl, and from what he says it's been going on a long time, so it's time something is done about it now." Cheryl said, "you don't know me and Matt's only been here 2 months". Furrow said, "well maybe you need to be transferred. You have already been written up 3 times, so one more time you're out the door anyway." Cheryl asked Furrow why she should meet him, since his mind was already made up.

31. Furrow convinced Cheryl to meet him on October 24, 2017. The conversation did not sit well with Cheryl. In her 20 years at Food Lion, she never saw an HR officer take a Food Lion employee off the property and meet somewhere else. That was very strange to Cheryl. Cheryl decided to call the District Manager, Michael Craig ("Craig"). Craig's office was located in the Staunton store. Craig is Obaugh's boss. Cheryl has known him for many years and he has always been very nice to her. Craig was not picking up the phone. His assistant back on the phone and realized Cheryl was still waiting and paged Craig again. Then Castle picked up the phone. Castle told Cheryl that DuBose had every right to speak the way he did. He was only telling me the truth. Cheryl explained to Castle how upset she was about the way DuBose had treated her; that he had mortified her in front of a customer and that the Food Lion customer also could not believe how DuBose treated Cheryl. Cheryl asked Castle if she should speak to Craig. Castle told Cheryl that "HR does their investigation. Michael always agrees with HR."

32. As Food Lion's bullying and harassment increased, Cheryl's health worsened. Her stress level was taking her down. Her self-esteem was destroyed.

33. On October 23, 2017, Castle showed up at the Palmyra store. Obaugh asked Cheryl to meet with him and Castle in his office. Cheryl has told Obaugh many times that she does not want to be in a meeting alone with 2 men, but obviously Obaugh did not care. Cheryl told Obaugh that she had an order to do. Obaugh said, “don’t worry about it. I’ll do it.” The first thing Castle said to Cheryl was “Michael Craig sent me here to resolve this issue with Mike and you.” The whole meeting they never brought up the customer that witnessed DuBose yelling at Cheryl and reprimanding her on the sales floor. When Cheryl mentioned the customer, who saw DuBose yelling at Cheryl, and mentioned that she was a retired supervisor, Obaugh said, “I don’t believe she was a supervisor. That’s what all the customers say and I don’t believe he was bothering you or yelling.” Then Obaugh said that Cheryl should have never have had to ask Matt for help; that she should have finished her whole truck that Monday.” Cheryl told Obaugh that it was impossible for her to finish her truck in one day, to which Obaugh replied “well you can’t do your job then.”

34. Castle and Obaugh started talking as if Cheryl was not even in the room, putting her down and falsely criticizing her performance. The next thing Obaugh said to Cheryl was “Cheryl, you should have been fired that day for leaving early because it was a day for you to make an order.” Obaugh asked, “did you talk to Matt and let him know you were leaving?” Cheryl replied, “of course.” Next, Castle brought up the transfer that Furrow from HR mentioned. Castle falsely said, “to be honest Cheryl, as far as a transfer goes no other store is going to want you because you can’t work 200pcs an hour and you would have to work the whole department in another store not just health and beauty aides you would have to work food and general merchandise and be responsible for ordering for everything.” Castle continued to say that in most Food Lion stores they only have one

HBC 40hr, full-time clerk and that the Palmyra store was an exception. Both Castle and Obaugh continued putting Cheryl down, falsely stating that she was slow, couldn't work fast enough, took too long making her orders, spent too much time helping customers, etc. Cheryl sat there in shock. She was devastated. The false statements were a total attack on her self-worth, self-esteem, confidence in herself and no matter what she did or did not do, Castle and Obaugh never respected and treated Cheryl with dignity. Castle said that "since another store is never going to want you and we have accommodated you with all your illness and helped you it's probably best if you stay here." Then Obaugh said, "things need to change. I'm not going into 2018 with the games that have been going on. I feel like my kids act better at home than people in this store." Castle finally said, "Okay, no transfer then, but I just want to let you know that by you calling HR on Matt that's on his permanent record now, so if he wants to move up in the company he might not be able to because of you."

35. After October 23, 2017, nothing ever changed. Ruggiero and her confederates continued their games. DuBose continued to speak in such a hostile manner to Cheryl that she was always in tears.

36. Cheryl knew it was only a matter of time before Obaugh and his crew got rid of her. Cheryl was scheduled to work on November 26, 2017. When she pulled into the parking lot, she saw DuBose's car and her stomach started turning and getting upset. She prayed to God, "please don't let me lose my job today because you know the devil is roaming in this store and God please protect me." Cheryl knew their plan. She punched in and didn't speak to anybody, except to be friendly to fellow employees. She wanted to finish the truck that she had been working on the prior day. Sometime during the day, DuBose

asked Cheryl why she could not work past 2:30 p.m. Cheryl told DuBose that was between herself, her doctor and HR and he should not be asking her because she already told him the Doctor's note and accommodation was with HR. In the backroom, as Cheryl was getting ready to leave for the day, DuBose said to her, "When I first came to work here, everybody told me you were a HR nightmare." Cheryl reminded DuBose that whatever was discussed with HR was highly confidential and so was her medical need to leave at a certain time. Cheryl went home. She felt worthless. The stress was really affecting her Lupus.

37. On November 28, 2017, DuBose fired Cheryl. DuBose had the day off, but came to the store in street clothes. DJ Treadway ("Treadway"), the customer service manager on duty, walked down Cheryl's aisle and said, "you needed in the back room in the training room", which is Obaugh's office. Cheryl asked Treadway, "What's going on?" Treadway said he did not know. When Cheryl went in the back office, she saw Jennifer Kingrey Deli Manager sitting in Obaugh's office, also in street clothes, so she thought they called her in on her day off, to be a witness. Kingrey did not want to be there because she looked at Cheryl and then put her head down and the whole time.

38. DuBose walked into the room and without explanation stated, "I need your headset and key to the cage [the cage is where Food Lion keeps extra pregnancy tests, chewing tobacco, baby formula etc.]." Cheryl asked, "why?" DuBose then stated, "I'm firing you because you didn't work 200pcs an hour yesterday. You had a 360pcs truck and I saw you bring that 6-wheeler back at 1:00 p.m. and I didn't see you pull anything else out there." Cheryl told Dubose that she did, in fact, pull extra totes out in the morning on a small 6-wheeler from back stock. He just did not see her work the 6-wheeler. DuBose

also said Mike Franklin came to him and said Cheryl was complaining to a customer that they always have to wait on the truck. Cheryl admitted that she told Eric, a Food Lion employee, that Food Lion employees always have to wait on the truck. DuBose then said, "I would have fired you yesterday [Monday 11/27/2017], but I had to go through Human Resources." Cheryl was crying because this was an ambush. This was defamation to get rid of Cheryl. DuBose asked Kingrey to sign Food Lion's discharge papers and then DuBose gave Cheryl a copy of discharge papers. DuBose then told Cheryl that she needed to clean out my locker or he would cut her lock off. While she was cleaning out her locker, Cheryl told DuBose that she needed to go grocery shopping afterwards because Food Lion had a special if you shopped 6 out of 8 weeks you saved \$20 and that day was the last day of the program and it would be Cheryl's 6th week. DuBose forbid Cheryl from shopping at the Food Lion.

39. To add insult to the injury, DuBose escorted Cheryl from the premises. When she got home, Cheryl went into a severe depression. She did not even tell her children that she had been fired until a week later. As a result of Food Lion's actions Cheryl had to go off her medication because she can no longer afford it. Her anxiety was off the charts.

COUNT I – Violation of the ADA

40. Reasonable accommodation is any change or adjustment to a job or environment that permits an employee with a disability to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by other employees without disabilities. Reasonable accommodation must be made to enable an individual with a disability to enjoy benefits and privileges of employment equal to those available to other employees. It is a violation of the ADA to fail to provide reasonable

accommodation to the known physical or mental limitations of a qualified individual with a disability, unless to do so would impose an undue hardship or the operation of an employer's business. Undue hardship means that the accommodation would require significant difficulty or expense. [<https://www.eeoc.gov/vacts/ada17.html>].

41. Between January 1, 2017 and November 28, 2017, Food Lion violated §§12112(a-b), 12201(d) and 12203(a-b) of the Americans with Disabilities Act (ADA). Food Lion discriminated against Cheryl Drumheller on the basis of her disability in regard to her advancement, compensation, discharge and other terms, conditions and privileges of employment. Food Lion's actions led to a loss of income, loss of future earning capacity, personal injury, pain and suffering. Food lion discriminated against Cheryl because she was willing to speak up for herself and others. The Food Lion coerced, intimidated, and interfered with Cheryl in the exercise or enjoyment of, or on account of her having exercised or enjoyed, rights granted or protected by the ADA.
42. Cheryl Drumheller is a member of a protected class. At all times of this action, she was qualified for her job at Food Lion and her performance was satisfactory.
43. Between May 2017 and November 2017, Food Lion violated §§ 12112(a-b), 12201(d) and 12203(a-b) of the ADA. Food Lion discriminated against Cheryl on the basis of disability in regard to Cheryl's advancement, compensation, discharge, and other terms, conditions, and privileges of her employment. Food Lion required Cheryl to accept an accommodation which Cheryl chose not to accept. Food Lion discriminated against Cheryl because she opposed an act or practice made unlawful by the ADA. Food Lion also coerced, intimidated, threatened, or interfered with Cheryl in the exercise or

enjoyment of, or on account of her having exercised or enjoyed, rights granted or protected by the ADA.

44. In addition to its violations of the ADA, Food Lion's actions constitute unlawful employment actions under 42 U.S.C. § 2000e-3(a). Food Lion discriminated against Cheryl because she opposed employment practices that violated subchapter VI of Title VII of the Civil Rights Act of 1964.

COUNT II – HARASSMENT/HOSTILE WORK ENVIRONMENT

45. The continuous unwelcome harassment of Cheryl between late 2016 and until the date of her firing in November 2017 was because of her disability.

46. The harassment was sufficiently severe or pervasive to alter the conditions of Cheryl's employment. The atmosphere at her work was physically and psychologically injurious. Cheryl was forced to accept unreasonable accommodations that made her existing conditions worse.

47. Food Lion is liable for the harassment and the hostile work environment created by its employees. The management at the store exercised no care whatsoever to enforce its anti-discrimination policies and/or to prevent and correct promptly the harassing behavior.

48. Food Lion, by the actions of its employees subjected (or caused to be subjected) Cheryl to the deprivation of rights and privileges secured by the ADA in violation of Title 42 U.S.C.

49. As a direct result of Food Lion's unlawful employment practices, Dr. Anderson suffered damage and incurred loss, including, but not limited to, loss of past and future earnings, fringe benefits, humiliation, pain and suffering, emotional distress, and loss of personal

and career reputation; injury to her future career, punitive damages, attorney's fees under 42 U.S.C. §§ 1988 and 12205, and costs incurred, in the amount of \$1,000,000.00 or such greater amount as is determined by the Jury.

COUNT III – DEFAMATION

50. The Defendant Food Lion published to third parties false and defamatory statements about Cheryl Drumheller that caused her harm. The Defendant did so with actual malice, reckless disregard for the truth and gross negligence.

51. As a direct result of Food Lion's defamation, Cheryl Drumheller suffered substantial damage and loss, including, but not limited to, presumed damages, actual damages, loss of income, pain and suffering, emotional distress and trauma, insult, anguish, stress and anxiety, public ridicule, humiliation, embarrassment, indignity, damage and injury to her reputation, costs, and other out-of-pocket expenses in the amount of \$1,00,000.00 or such greater amount as is determined by the Jury.

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, Cheryl Ann Drumheller respectfully requests the Court to enter Judgment against Food Lion, LLC as follows:

- A. Compensatory damages in the amount of \$1,000,000.00 or such greater amount as is determined by the Jury;
- B. Punitive damages in the amount of \$350,000.00 or the maximum amount allowed by law;
- C. Prejudgment interest at the rate of 6% per year on the Principal Sum awarded by the Jury from November 28, 2017 to the date of Judgment;
- D. Post judgment interest at the rate of six percent (6%) per annum until paid;

- E. Attorney's Fees;
- F. Expert Witness Fees;
- G. Such other relief as is just and proper.

TRIAL BY JURY IS DEMANDED

DATED: December 7, 2018

CHERYL ANN DRUMHELLER

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